ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)	)	CC Docket No. 01-338

OPPOSITION OF COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby opposes the forbearance petition filed by the Verizon telephone companies ("Verizon") in this proceeding on July 29, 2002. In that petition, Verizon asks the Commission to remove specific unbundled network elements ("UNEs") from the Section 271 competitive checklist in the event those UNEs are removed from the mandatory UNE list pursuant to Section 251(d)(2). Verizon's request is contrary to the statutory provisions on which it claims to rely, and is a rather grotesque example of the regulatory overreaching that is now commonplace among all Bell Companies before this Commission.

Section 10(d) of the Communications Act prohibits the Commission from applying its forbearance authority to Section 271 before a Bell Company has received approval to offer in-region interLATA services in a state. While not all provisions in the Telecommunications Act of 1996 are written clearly, this one is. It states that "the Commission may not forbear from applying the requirements of section . . . 271 . . . until it determines that those requirements have been fully implemented." 47 U.S.C. §160(d). The 14-point competitive checklist has not been "fully implemented" until the Bell Company provides each required functionality and obtains Commission approval to begin offering in-region interLATA services

in a state. Removing functionalities from the competitive checklist before the Bell Company has actually provided them in a state does not comport with any reasonable reading of the "fully implemented" language.

Further support is found in Section 271(d)(4), which provides that the Commission may not "limit" the terms used in the competitive checklist. 47 U.S.C. §271(d)(4). If the Commission is prohibited from limiting the terms of the competitive checklist, surely it lacks authority to remove the terms altogether.

Perhaps anticipating that its forbearance request would be denied as overreaching, Verizon asks the Commission, in the alternative, to determine that a Bell Company should not be required to offer a UNE as an ongoing condition of an existing Section 271 authorization if the Commission has removed that UNE from the mandatory list pursuant to Section 251(d)(2). Verizon's position is that if a UNE is not placed on the mandatory list under Section 251(d)(2), then it automatically must qualify for removal from the Section 271 competitive checklist pursuant to the Commission's forbearance authority. Verizon has confused two wholly separate statutory inquiries, and hence its request must be denied.

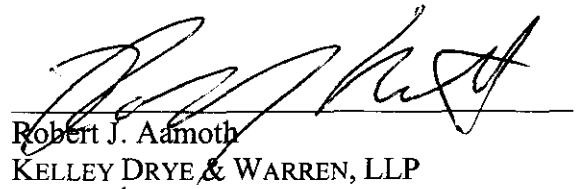
The inquiry under Section 251(d)(2)(B) focuses on whether preventing a requesting carrier from having access to a UNE provided by the incumbent local exchange carrier ("ILEC") would impair its ability to provide the services that it seeks to offer. Further, based on the statutory "at a minimum" language, the Commission has held that it may consider other public policy factors in deciding whether to include a UNE on the mandatory list. By contrast, Section 10(a) focuses on whether forbearance will undermine statutory or regulatory requirements that help ensure reasonable and non-discriminatory rates, terms and conditions for

end-user subscribers, and whether continued application of such requirements is needed to protect consumers and promote the public interest. 47 U.S.C. §160(a). While there is certainly overlap between the two statutory inquiries, it is presumptuous for Verizon to suggest that a UNE which is removed from the mandatory list pursuant to Section 251(d)(2) will always satisfy the statutory forbearance criteria under Section 10(a).

It is particularly disingenuous for Verizon to seek to equate the two statutory inquiries when the Bell Companies have urged the Commission to remove UNEs from the mandatory list even when a functioning wholesale market does not exist for the UNE in question. *E.g.*, Verizon Petition at 2 n.6 ("statutory impairment test . . . can be met without development of a wholesale market"). Such a wholesale market is the only empirical basis upon which the Commission could reasonably conclude that removing a UNE would not harm consumers by increasing retail rates. Moreover, Verizon has argued (misguidedly) that even if a UNE may satisfy the statutory impair test, the Commission should remove it from the mandatory list anyway in an effort to promote a hodge-podge of pro-Bell public policy objectives, such as investment in more excess network facilities. E.g., Comments of Verizon, CC Docket No. 01-338, filed April 5, 2002, at 25-38. (CompTel questions how the Bell Companies can seriously defend their past proposals to promote network investment at all costs in light of recent market turmoil caused by a glut of excess capacity, but Verizon has unflinchingly stayed the course in its forbearance petition.) It is undeniable that removing UNEs from the mandatory list under the standards and criteria proposed by the Bell Companies would lead, directly and immediately, to higher rates for end-user subscribers. Such a result is obviously inconsistent with the exercise of forbearance authority by the Commission under Section 10.

Once the Commission rejects Verizon's facile effort to equate the two wholly-separate statutory inquiries under Sections 10(a) and 251(d)(2), the Commission should not tarry in summarily rejecting Verizon's petition. Verizon has offered no record evidence to show that any of the Section 10 criteria are satisfied. Rather, Verizon merely includes several lengthy footnotes summarizing bits and pieces of record evidence regarding whether certain UNEs should be removed from the mandatory list under Section 251(d)(2). Such evidence does not address the statutory criteria for the exercise of forbearance authority, and Verizon's petition should be rejected forthwith.

Respectfully submitted,



Robert J. Aamoth
KELLEY DRYE & WARREN, LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036
(202) 955-9600

Counsel to CompTel

Robert M. McDowell
Vice President
and Assistant General Counsel
Jonathan Lee
Vice President Regulatory Affairs
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION
1900 M Street, N.W., Suite 800
Washington, D.C. 20036
(202) 296-6650

September 3, 2002

CERTIFICATE OF SERVICE

I, Theresa A. Baum, hereby certify that on this 3rd day of September, 2002, I served copies of Opposition of Competitive Telecommunications Association in CC Docket No. 01-338 by hand delivery and first-class mail, postage prepaid, upon the following:

Janice M. Myles
Competition Policy Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Robert Tanner
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Qualex International
445 12th Street, S.W.
Washington, D.C. 20554

Jeffrey S. Linder*
Nicole A. Rothstein
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006

William Maher
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Jeremy Miller
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Michael E. Glover*
Edward Shakin
Verizon
1515 North Courthouse Road
Suite 500
Arlington, VA 22201-2909

Theresa A. Baum

* Indicates Service via first-class mail, postage prepaid.